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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.R., a Person Coming
Under the Juvenile Court Law.

B294214
(Los Angeles County
Super. Ct. No.
18CCJP03226A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Veronica S. McBeth, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

M.M., mother, appeals from the juvenile court's jurisdiction and disposition orders. She contends the jurisdictional finding that she was unable to maintain a safe home for her now 16-year-old son is not supported by substantial evidence. Mother further contends the juvenile court erred in relying on the unsupported jurisdictional findings when it removed the child from her custody. We affirm the orders.

II. BACKGROUND

On March 8, 2018, the Los Angeles County Department of Children and Family Services (Department) received a referral concerning the condition of mother's home. The caller appears to have been a probate investigator who was at the home in connection with the child's adult brother, who was under a conservatorship and also lived in the home. The caller reported that mother's home smelled of trash. The home was cluttered and appeared to be "under hoarding conditions." "There was stuff piled everywhere, as well as food on top of other items. There was a car nearby that had food on top of it." The caller asked

mother to explain the condition of her home. Mother responded that she did not have time to organize.

In a subsequent interview, the probate investigator stated there were “massive quantities of food and junk all over the home.” “Things” were piled so high the probate investigator could not see the furniture. The probate investigator believed the home’s environment was a health hazard.

On April 19, 2018, a social worker interviewed the child, who was well-groomed and dressed in clean, neat clothing. He “displayed appropriate affect and did not appear to be uncomfortable or in distress.” He appeared to be meeting his developmental milestones and answered all questions directly without any difficulty. The social worker did not observe any marks or bruises on the child that would indicate abuse or neglect.

The child reported that he was doing fine in school and had no problems of any sort. He felt safe at home and was never afraid to return home. The child denied general neglect and caretaker “absence/incapacity.” He stated that he was well taken care of and he received his basic needs daily. The child stated that he had no problems with his mental health or mood and had no concerns about mother’s behavior.

The child also stated that his home was clean and not filthy. There was no trash around the home and no insect or rodent infestations.

On May 7, 2018, after several attempts to meet with mother, the social worker and police officers went to mother’s home to serve an investigative search warrant. Mother was not home.

Outside the home, there was no longer any food or full trash bags on the ground or on the cars. Inside the home, there were piles of old food on the floor and stairs. The home smelled like trash and there were multiple flies around the front door. One of the officers stated that the smell was “awful” and asked if there was a dead body in the home. The social worker was unable to go upstairs due to the smell. The living room was filled with junk. Hanging sticky fly traps were filled with flies. There was no clear pathway through the home as there was food and other objects on the floor.

On May 17, 2018, the social worker spoke with mother on the telephone, informing mother of the need to meet immediately concerning the condition of the home. Mother said she was aware of the situation and asked to meet the following Monday. The social worker explained that the home environment was a hazard to the child’s health and asked if the child could stay with a relative or friend. Mother stated she would provide contact information for the child’s godparents later that day.

The same day, the social worker spoke with a maternal relative who stated that mother had a hoarding problem. The relative stated that mother did not grasp the seriousness of the problem. He was concerned that the condition of the home was hazardous to the child, but stated that the child was well cared for and never harmed. He believed that the child was a “mama’s boy,” and would be devastated if removed from mother’s care.

The social worker went to the child’s high school to detain him. School officials stated that the child was a “good kid” and there had been no concerns about his hygiene or appearance. The child had many school absences and was failing most of his classes.

The child said that he would like to go home, but had no objection to residing with his godparents. He was willing to help mother clean the home.

On May 21, 2018, the Department filed a petition under Welfare and Institutions Code¹ section 300, subdivision (b)(1) alleging mother's home was filthy, unsanitary, and emitted a foul odor. The petition alleged there were piles of old food on the floor and stairs; flies swarmed around the old food. Hanging sticky fly traps in the home were filled with flies. In addition to flies, there were bed bugs and gnats in the home. The house was filled with trash bags, containers, and clutter so that there was no clear pathway through the home. Outside, there was food on top of a car and on the ground; flies swarmed around the food. Also, there were many trash bags piled on the ground and buckets of water in the back yard. The condition of mother's home endangered the child's physical health and safety and placed him at risk of serious physical harm, damage, and danger.

The same day, the social worker spoke with mother. Mother admitted the condition of the home was a problem, but explained that the condition had gotten worse when she injured her leg the previous year. She denied she was a hoarder. There was a lot of food in the house because the child ate a lot. Mother went to the food bank on Tuesdays and Thursdays. Mother admitted she needed assistance maintaining her home, stating she had applied for but was denied in-home support. She stated she would re-apply.

The social worker asked mother about her mental health. Mother said she had been receiving services from Kedren Mental

¹ All statutory citations are to the Welfare and Institutions Code.

Health Services for five years. She saw her therapist once a month. Mother had been diagnosed with depression. Her depression resulted from having been hit by a car the previous year. Mother suffered nerve damage and had problems with her leg thereafter. She did not take any medication. Mother did not use drugs or alcohol. The social worker observed mother to be coherent and display appropriate affect. Mother did not appear to be under the influence.

On May 22, 2018, the juvenile court found a prima facie case for detaining the child and ordered the child removed from mother's custody.

The Department's June 12, 2018, Jurisdiction/Disposition Report states that a social worker interviewed the child on May 28, 2018. The child stated that most of the allegations in the section 300 petition were true. He acknowledged that the home was too cluttered and stated mother started having "this problem" about a year prior. He did not understand why mother kept the items cluttering the home and had asked her to get rid of them but was rebuffed. The child told the social worker his chores included cleaning his room and vacuuming. He usually vacuumed around the clutter, some of which he threw out when mother was sleeping.

The child felt safer in his placement home than in mother's home due to the clutter in mother's home and wanted to remain in his current placement. His caregivers were committed to caring for him as long as necessary. The child reported having a good relationship with mother and his siblings and his desire to eventually return home. The child denied any abuse. Mother provided for all his needs. He denied any drug or alcohol use in the home.

On June 4, 2018, the social worker spoke with mother's therapist. The therapist reported that mother had been diagnosed with major depression with psychotic features. Mother was receiving medication management and rehabilitation therapy. Mother's treatment was not "field[-]based," so the therapist was unable to comment on mother's living conditions. Mother's treatment was based on mother's self-reports and did not address hoarding. The therapist recommended that mother be transferred to a field-based therapist who could enter mother's home to assess the living conditions and work with mother accordingly.

According to the report, mother had not made herself available for an interview. She had been uncooperative with the Department in providing information concerning the condition of her home and in creating an appropriate case plan that would meet the family's needs and provide for the child's safety and well-being. Father's whereabouts were unknown.

On July 20, 2018, a social worker finally was able to speak with mother on the telephone about this case. The social worker asked mother to provide a statement about the allegations in the section 300 petition. Mother responded, "A lot of the stuff they said was over the top. The groceries that were on the floor were groceries that were obtained when I was in the hospital and I asked my son to put them away and he did not so it caused gnats to come. A lot of the clothing that was in bags was stuff that needed to be washed. Regarding the home being filthy and dirty, the person didn't walk through the whole home so I don't know how they could make that statement. The stuff on the car was gone before they came back the second time. It's hard when you have nerve damage in your leg[.] I have a hard time walking and

lifting anything. The only person who could help me with the issue was removed. My 6'3, 200 pound 15-year-old. So at 63 [years old] they virtually left me with no one to assist me because my disabled son couldn't do it." Mother denied there were flies in the home.

On July 31, 2018, the juvenile court ordered the Department to prepare an updated home evaluation. As of September 21, 2018, the Department had not completed the evaluation because mother repeatedly requested to reschedule each of the Department's scheduled appointments.

On September 24, 2018, the juvenile court ordered the Department to set up a walk-through to inspect mother's home to determine if it was appropriate to return the child to the home. On October 11, 2018, the child told a social worker that he did not want to return to mother's home as "things [had] not changed."

On October 23, 2018, the Department reported to the juvenile court that it had been unsuccessful in setting up an assessment of mother's home despite multiple attempts. The Department concluded that mother had no intention of allowing the Department into her home.

On November 7, 2018, at the jurisdiction and disposition hearing, the juvenile court sustained the petition and declared the child a dependent of the court. The juvenile court removed the child from mother's custody and ordered him placed with his caregivers. It ordered the Department to provide mother with family reunification services including conjoint counseling with the child when appropriate, parenting classes, a psychological assessment, individual counseling, and unmonitored visitation

with the child outside of mother's home. The court denied father reunification services as his whereabouts were unknown.

III. DISCUSSION

A. *Jurisdiction Order*

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b) when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child”

Mother contends substantial evidence does not support the jurisdictional findings because, despite the “filthy and unsanitary home environment [she] had established for [the child],” the social worker had observed the child to be well-groomed and well-dressed while in mother's care and did not observe any marks or bruises on the child that would indicate abuse or neglect. Also, while still in mother's care, the child told the social worker he felt

safe in the home, he was well cared for, and his needs were met daily. Finally, mother had cleared some of the debris outside.

Sufficient evidence supports the jurisdiction order under section 300, subdivision (b) based on mother's failure to protect the child. Mother's home was filthy and "under hoarding conditions." There were piles of old food on the floor and stairs and the home smelled like trash. The smell inside the home was so bad that a police officer who entered wondered if there was a dead body in the home and the social worker was unable to go upstairs. There were numerous flies and gnats in the home. The probate investigator, the social worker, and one of mother's relatives described the condition of the home as a health hazard.

Mother was aware that the condition of her home was a "problem." Between the March 8, 2018, referral and the May 7, 2018, investigative warrant search of mother's home, the outside area of the home had been cleaned. However, during the pendency of the case there apparently was no change in the condition of the inside of the home. Thus, on October 11, 2018, the child told the social worker that we did not want to return home because "things had not changed."

B. *Disposition Order*

Under section 361, subdivision (c)(1), a juvenile court may remove a dependent child from a parent's custody when it finds clear and convincing evidence that "[t]here is or would be [a] substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the

minor from the minor's parent's physical custody." Jurisdictional findings are prima facie evidence that a minor cannot safely remain in the home. (*In re T.V.* (2013) 217 Cal.App.4th 126, 135.)

We review the juvenile court's dispositional finding for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) Because the juvenile court's finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there was substantial evidence of the existence of clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: "“The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, the clear and convincing test disappears and ‘the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) In this case, the evidence was sufficient under either standard.

Mother contends the Department did not meet its burden of showing there was a substantial danger to the child's physical health necessitating removal from her custody. Instead, mother contends, the evidence showed that the child could safely be returned to her custody. Mother states she had cleaned outside without the Department's assistance and she was attending therapy and receiving medication management. Mother further

states that the Department failed to help her mitigate the issues with her home's condition by providing her a field-based services provider as her therapist recommended. Finally, mother states that the child was an older child who was better able than a younger child to deal with the risks of navigating in a cluttered home.

Substantial evidence supported the disposition order for the same reasons that the evidence supported the jurisdiction order. The child was detained from mother due to the filthy and unsanitary condition of mother's home which presented a health hazard to the child. When the Department detained the child and filed the section 300 petition, mother was made aware that the Department viewed the condition of her home as posing a risk to the child and she acknowledged that the condition of her home was a "problem." Nevertheless, mother did nothing to address the conditions inside the home which, according to the child, remained unchanged less than a month before the adjudication hearing. The condition of mother's home initially justified the child's detention and supported jurisdiction; the unchanged condition of the home justified removing the child from mother's custody.

IV. DISPOSITION

The orders are affirmed.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.